

ARE YOU OWED WAGES?

New Law Can Help You Get Wages Your Employer Owes You: L&I Can Now Do More to Help You Get Paid

How will the new law help me?

Under a law passed in 2006, the Washington Department of Labor and Industries (L&I) has new authority to collect wages owed to workers. In the past, L&I had the power to investigate and ask for wages, but it could not require employers to pay wages. Now L&I can decide what wages are due and collect those wages for the worker. The law also authorizes L&I to assess civil penalties against employers who have willfully failed to pay wages. If the employer or the worker disagrees with L&I's decision, either one can appeal to an Administrative Law Judge and, as explained later, the worker can "opt-out" of the administrative process and pursue a court action. The administrative process is usually simpler than the court process.

Can I go to court instead of using the L&I wage complaint process?

Yes. Workers do not have to complain to L&I to collect their wages. Workers can still go to small claims court or hire a lawyer to help them collect their wages. (Information on going to small claims court may be found at <http://www.washingtonlawhelp.org>) But as explained below, if a worker asks L&I to help collect wages, the worker may have to choose between going to court and asking L&I to collect the wages.

What are my rights to receive wages in Washington?

Washington law gives you the right to receive:

- The wages promised by your employer
- The minimum wage (this applies to most workers) -- see Washington Law Help brochure "How to Enforce Your Right to Receive Minimum Wage" at website listed above.
- Overtime (time-and-a-half pay) for work over 40 hours a week (this applies to most workers)
- Payment of wages without illegal deductions
- Payment of wages on the next regular payday if you quit or are fired.

What can I receive if I go to court instead of using the L&I wage complaint process?

If the employer "willfully" fails to pay wages owed to you (that is, if the employer knew what he was doing and still didn't pay you all your wages), you may file suit in court for double the amount of the unpaid wages. In some cases the failure to pay wages is not willful – for example, where the employer makes an honest mistake (and corrects it when he finds out) or where the employer is confused about his obligation to pay wages. If the failure to pay wages is not "willful" you can sue for unpaid wages, but not double the

unpaid wages. The court may also order the employer to pay your attorney fees if you win. Either a court action or an L&I complaint must be filed within three years of the date that wages were owed.

What can I receive through the L&I wage complaint process?

If L&I finds that your employer violated the law, L&I can only collect the wages and interest owed. **L&I cannot assess or collect double the unpaid wages for you, even if the failure to pay is willful. L&I may assess penalties against the employer for willful failure to pay wages; however, those penalties would go to L&I, not you.** In some cases, you may prefer to complain to L&I instead of going to court (for example if going to court might take too long or be too expensive).

Here is how the L&I wage complaint process will work:

1. **If you feel your employer has not paid you all the wages owed, you may make a wage complaint** with L&I. You may do this in writing, either in a letter or on L&I's complaint form available at any L&I office or online. You may get help in filling out this form at any L&I office. You must sign the form or letter in order for L&I to start the investigation.. Remember that L&I will only pursue claims for actual hours worked and other amounts that count as "wages". (This might not include things such as bonuses, vacation pay or holiday pay owed.)
2. **L&I will investigate** the complaint and within 60 days make either:
 - a) a "**citation and assessment**" requiring the employer to pay the unpaid wages, plus interest at 1% per month, or
 - b) a "**determination**" that your employer did not violate the law and does not owe you anything.The law requires L&I to send a copy of its decision to both you and the employer by certified mail or service of process.
3. **If L&I issues a citation and assessment** against your employer for the unpaid wages, the employer can avoid paying a penalty to L&I by paying the wages owed plus interest of 1% per month within 10 days from receiving the citation. **If you accept the employer's check for the unpaid wages and interest that L&I decides is owed, you give up the right to object to L&I's decision** and may not bring suit against the employer for the violation in your complaint to L&I.
4. **If you do not agree with either the citation and assessment or the determination made by L&I, you have 2 choices:**
 - a: **To keep your right to go to court, you must "opt out" of this administrative process.** You must write L&I within 10 days of your receipt of the decision and state that you want to end the complaint. You then have 3

years from the date the wages were owed to file a lawsuit. You may not use L&I's findings in such a lawsuit; **Or,**

b: If you do not agree with L&I's decision and want to stay with the administrative process, you can file an administrative appeal of L&I's decision **within 30 days of the decision.** You can appeal if you think that L&I was wrong in finding that no wages are owed or if you think that L&I found an amount of wages owed that is too low. The employer can also appeal L&I's decision if the employer disagrees with the decision.

5. **If you do not "opt-out"** from the decision by writing to L&I, and neither you nor the employer appeal the decision by L&I, then **the L&I decision is final.** When any appeals are over and L&I's decision is final, L&I can collect wages for you.

Before you decide to file an L&I wage complaint:

- You may want to consult with an attorney before filing a complaint with L&I to better determine which process, court or L&I, is best for you. You cannot pursue a court action and the L&I wage complaint process at the same time. Either option must be started within 3 years of the date that wages are owed.
- If you want to pursue double damages for the employer's willful failure to pay wages, you can only do that in a court action.
- If you first use the L&I wage complaint process, remember that you will be **giving up any right to sue in court** for double the unpaid wages unless you notify L&I that you are withdrawing from the administrative process **within 10 days of L&I's decision that the employer owes wages.**

L&I has many offices around the state. You may visit any office to file a complaint. To find the office nearest you, call 1-800-547-8367. For TDD service call: 360-902-4685

**If you have questions about your rights, you may contact
CLEAR (Coordinated Legal Education, Advice, and Referral)
at 1-888-201-1014.**